

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TOMMIE SLACK,

Plaintiff,

v.

S. KARIKO, et al.,

Defendant.

Case No. C20-05508-RSM-SKV

ORDER ON MOTION TO APPOINT  
EXPERT

Plaintiff proceeds pro se in this 42 U.S.C. § 1983 civil rights action. Plaintiff has filed an amended complaint and Defendants have filed an answer. Dkts. 66 & 69. Plaintiff has now filed a motion for a court appointed expert, Dkt. 83. For the reasons set forth below, Plaintiff's motion, Dkt. 83, is DENIED.

DISCUSSION

Plaintiff moves for the Court to appoint an expert witness for his constitutional claims alleging deliberate indifference on the part of various Department of Corrections (DOC) employees related to his medical care. Dkt. 83 at 3. Plaintiff argues that appointing him an expert would "be avoiding a wholly one[-]sided presentation of opinion on the issue." *Id.* Alternatively, Mr. Slack appears to request that he be permitted to present "a brief by an expert

1 on DOC's Offender Health Plan Manual" in order to demonstrate a genuine issue of material fact  
2 for trial. *Id.* at 5.

3 Federal Rule of Evidence 706 allows the court to appoint a neutral expert. *Students of*  
4 *Cal. Sch. For the Blind v. Honig*, 736 F.2d 538, 549 (9th Cir. 1984), *vacated on other grounds*,  
5 471 U.S. 148 (1985). "The determination to appoint an expert rests solely in the court's  
6 discretion and turns upon the complexity of the matters to be determined and the need for neutral  
7 expert review." *Turner v. Ralkey*, No. C20-5472-BHS-DWC, 2021 WL 135855 at \*2 (W.D.  
8 Wash. Jan. 13, 2021) (citing *Ledford v. Sullivan*, 105 F.3d 354, 358-59 (7th Cir. 1997)).  
9 "Appointment [of expert witnesses] may be appropriate when 'scientific, technical, or other  
10 specialized knowledge will assist the trier of fact to understand the evidence or decide a fact in  
11 issue....'" *Levi v. Director of Corrections*, 2006 WL 845733 (E.D. Cal. March 31, 2006) (citing  
12 *Ledford*, 105 F.3d at 358-59 (7th Cir. 1997)). However, "[r]easonably construed, [Rule 706]  
13 does not contemplate the appointment of, and compensation for, an expert to aid one of the  
14 parties." *Walker v. Woodford*, No. C05-1705, 2008 WL 793413 (S.D. Cal., March 24, 2008)  
15 (citation omitted).

16 The primary issue in this case is whether Defendants acted with deliberate indifference to  
17 Plaintiff's serious medical needs in their treatment of Plaintiff's complaints of pain and other  
18 physical problems related to a growth on his back while Plaintiff was housed in Department of  
19 Corrections (DOC) facilities from approximately September 2018 to September 2020. Dkt. 66.  
20 Plaintiff appears to be requesting that the Court appoint an expert to serve as his advocate in  
21 order to show that Plaintiff suffered from a serious medical need, treatment of that need was  
22 medically necessary, and Defendants were deliberately indifferent in their treatment of Plaintiff.  
23 Dkt. 83. This, however, is not the function of a neutral expert witness. *See Spinks v. Lopez*, No.

1 C10-01886, 2014 WL 411283, at \*2 (E.D. Cal. Feb. 3, 2014), *subsequently aff'd*, 623 F. App'x  
2 499 (9th Cir. 2015) (“The appointment of an expert witness under Rule 706 is intended to benefit  
3 the trier of fact, not a particular litigant[.]”); *Bontemps v. Lee*, No. C12-0771, 2013 WL 417790,  
4 at \*3–4 (E.D. Cal. Jan.31, 2013); *Gamez v. Gonzalez*, No. C08-1113, 2010 WL 2228427, at \*1  
5 (E.D. Cal. Jun. 3, 2010).

6 To the extent Plaintiff's request can be construed as a request for a neutral expert, the  
7 facts of this case are not extraordinary and the legal issues do not appear to be complex. *See*  
8 *Sloan v. Oakland Police Dep't*, 376 F. App'x 738, 740 (9th Cir. 2010); *Honeycutt v. Snider*, No.  
9 C11-00393, 2011 WL 6301429, at \*1 (D. Nev. Dec. 16, 2011) (“The appointment of experts in  
10 deliberate indifference cases is rare, and such requests should be granted sparingly, particularly  
11 given the large volume of cases in which indigent prisoners allege claims under the Eighth  
12 Amendment related to medical care, and the substantial expense defendants may have to bear if  
13 courts were to appoint experts in such cases.”). At this stage of litigation, the Court does not  
14 need a neutral expert to determine any issues in this case. Accordingly, Plaintiff's motion for a  
15 court appointed expert, Dkt. 83, is denied.

16 Alternatively, Plaintiff appears to request that he be permitted to present “a brief by an  
17 expert on DOC's Offender Health Plan Manual” in order to demonstrate a genuine issue of  
18 material fact for trial. *Id.* at 5. However, the Court notes that Plaintiff does not identify the  
19 name of the expert or provide any information on the substance of that expert's opinion. *Id.*  
20 Furthermore, Plaintiff appears to be seeking to admit the expert's brief as a means to defend  
21 against a summary judgment motion and show a genuine issue of fact for trial. *Id.* But, as  
22 Defendants point out, neither party has yet filed a motion for summary judgment and, as such, it  
23 appears Plaintiff's request is premature. If Plaintiff ultimately seeks to present this expert report

1 in support of or in opposition to any subsequently filed motion for summary judgment, and at  
2 that time Defendants have additional objections to the report, the Court will take up the  
3 objections at that time.

4 The Court also notes that it appears Plaintiff may be raising this issue at this time because  
5 of the upcoming deadline for disclosure of expert testimony pursuant to Fed. R. Civ. P. 26(a)(2).  
6 *See* Dkt. 82. As discussed above it is premature to present evidence in the form of an expert  
7 report to the court at this time. However, if Plaintiff's concern is related to the upcoming  
8 deadline for expert disclosure, the Court notes that Plaintiff satisfies this obligation under Fed. R.  
9 Civ. P. 26(a)(2) by providing the relevant information outlined in that rule to the "other parties"  
10 in the case, i.e., the Defendants.

11 CONCLUSION

12 For the above reasons, Plaintiff's motion for a court appointed expert, Dkt. 83, is  
13 DENIED.

14 The Clerk is directed to provide copies of this order to Plaintiff, Defendants and to the  
15 Hon. Ricardo S. Martinez.

16 Dated this 12th day of July, 2022.

17   
18 \_\_\_\_\_  
19 S. KATE VAUGHAN  
20 United States Magistrate Judge  
21  
22  
23